

BEFORE THE MEDICAL LICENSING
BOARD OF INDIANA
CAUSE NUMBER: 2022 MLB 0024

IN THE MATTER OF THE LICENSE OF:)
)
CAITLIN BERNARD, M.D.)
)
LICENSE NUMBER: 01078719A)

FILED

JUN 27 2023

Indiana Professional
Licensing Agency

**FINDINGS OF FACT, ULTIMATE FINDINGS OF FACT,
CONCLUSIONS OF LAW AND FINAL ORDER**

The Medical Licensing Board of Indiana (“Board”) held an administrative hearing on May 25, 2023, at the Indiana Government Center South, Conference Center Room C, 302 West Washington Street, Indianapolis, Indiana 46204, concerning the Administrative Complaint filed against the Indiana physician license of Caitlin Bernard, M.D. (“Respondent”) on November 30, 2022.

The State of Indiana (“Petitioner”) was represented by Deputy Attorneys General Cory Voight and Carah Rochester and outside counsel, Christopher Bartolomucci. Respondent appeared in person and by counsel, Alice Morical, John Hoover, and Clara Gutwein.

The Board, after considering the evidence presented and official notice of its file in this matter, issues the following Findings of Fact, Ultimate Findings of Fact, and Conclusions of Law and Order:

FINDINGS OF FACT

1. Respondent is a licensed physician in the State of Indiana having obtained license number 01078719A, on June 7, 2017.
2. Respondent holds two active Controlled Substances Registrations (CSR), having been issued license numbers 01078719B and 01078719C.

3. Respondent's address on file with the Indiana Professional Licensing Agency is 550 North University Boulevard, Indianapolis, Indiana 46202.

4. For all times relevant, Respondent is employed by Indiana University Health ("IUH") Physicians as an OB/GYN and by the Indiana University School of Medicine as an Assistant Clinical Professor of Obstetrics & Gynecology.

5. Respondent is a "practitioner" as that term is defined by Ind. Code § 25-1-9-2.

6. On or about June 27, 2022, Respondent received a referral from an Ohio physician for a patient ("Patient").

7. Patient was a minor female, aged ten years, seeking abortion care.

8. Respondent believed Patient had become pregnant as the result of sexual abuse.

9. On June 27, 2022, Respondent informed IUH Social Worker Stephanie Shook ("Shook") about Patient.

10. On June 28, 2022, Shook contacted Ohio's Franklin County Children Services ("FCCS") to report the suspected abuse of Patient.

11. On June 29, 2022, Shook spoke with FCCS Caseworker A who informed Shook that her report was screened out due to the existence of a report filed for the same reason, and that Ohio law enforcement had already been notified.

12. On June 29, 2022, Respondent attended a public rally related to the recent Supreme Court decision in Dobbs v. Jackson Women's Health Organization, 124 S. Ct. 2228 (2022) and abortion laws being considered in Indiana. The rally was held outdoors and attended by a few hundred individuals – including media.

13. At the rally, Respondent discussed Patient with another physician, Grant Callen, M.D. (“Callen”). During this conversation, Respondent disclosed that Patient was: (1) from Ohio; (2) ten years old, and (3) pregnant.

14. *Indianapolis Star* reporter Shari Rudavsky (“Rudavsky”) was covering the rally and overheard Respondent’s disclosure to Callen.

15. Rudavsky introduced herself to Respondent as a reporter and indicated she was writing a news story about people coming from Ohio to Indiana to have abortions due to Ohio’s trigger law. At Rudavsky’s prompting, Respondent disclosed: (1) Patient had been referred to her on or about June 27, 2022; (2) Patient was ten years old; (3) Patient was from Ohio; (4) she would be providing abortion care to Patient; and (5) Patient was six weeks and three days pregnant.

16. On June 29, 2022, Patient presented to IUH accompanied by her mother.

17. On or about June 30, 2022, Respondent provided abortion care to Patient, and collected the products of conception for purposes of DNA testing.

18. On or about June 30, 2022, Patient’s mother signed an Authorization to Release and Disclose Patient Information for the limited purpose of facilitating communications with FCCS.

19. On June 30, 2022, Caseworker A told Shook that Patient was cleared to return home.

20. On July 1, 2022, the patient was discharged from the hospital and returned home to Ohio.

21. On July 1, 2022, the *Indianapolis Star* published an article titled, Patients head to Indiana for abortion services as other states restrict care (“Article”). The Article contained the information Respondent disclosed.

22. In the weeks following the Article, various media outlets and politicians commented on Patient's information. Many commenters expressed doubt as to Patient's existence, and some media outlets searched for Patient's identity.

23. On July 2, 2022, Respondent submitted a Terminated Pregnancy Report ("TPR") to the Indiana Department of Health ("IDOH").

24. On July 2, 2022, Respondent emailed the TPR to the Indiana Department of Child Services ("DCS").

25. Indiana law enforcement was not notified.

26. On July 2, 2022, Ohio law enforcement travelled to Indianapolis, Indiana to retrieve the products of conception as evidence in the criminal investigation of Patient's sexual abuse.

27. On July 5, 2022, Lauren Cislak, IUH Vice President of Corporate Communications, Public Relations and Social Media, discovered the Article and referred it to the IUH Privacy Office as a possible violation of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA").

28. On or about July 5, 2022, Melissa Cockrum, IUH Privacy Office Project Manager, investigated the matter.

29. IUH conducted a "Risk Assessment" to determine whether it was required to issue notice of a data breach pursuant to the requirements of 42 C.F.R. §164.408. The IUH Risk Assessment stated, "at the time of the interview with the *Indianapolis Star*, the patient was not identifiable."

30. On July 6, 2022, Respondent sat for an interview with MSNBC.

31. On July 6, 2022, Ohio law enforcement went to Patient's home to speak with Patient and Gerson Fuentes ("Fuentes"), Patient's mother's boyfriend.

32. Patient acknowledged to Ohio law enforcement that Fuentes was the individual who sexually assaulted her, and Fuentes admitted to having vaginal intercourse with Patient.

33. According to Ohio authorities, DNA testing of the product of conception demonstrated that there was a 99.99% probability Fuentes's paternity.

34. Between July 8 and 12, 2022, the Office of the Indiana Attorney General ("OAG") received six (6) consumer complaints against Respondent.

35. On July 12, 2022, Fuentes was arrested and charged with two (2) counts of rape in Ohio cause number 22-CR-3226.

36. Through Fuentes's criminal proceedings, at least one media outlet was able to identify Patient.

37. On July 13, 2022, *The Columbus Dispatch* ran an article titled, Arrest made in rape of Ohio girl that led to Indiana abortion drawing international attention, in which it identified Fuentes as Patient alleged abuser.

38. On July 27, 2022, Respondent sat for an interview with CBS Evening News in which she discussed the fallout from her original disclosure to Rudavsky.

39. On September 28, 2022, Respondent was featured in *The New York Times* and named on its 2022 Time100 Next list.

40. On October 12, 2022, Respondent was featured in an issue of *Vanity Fair*.

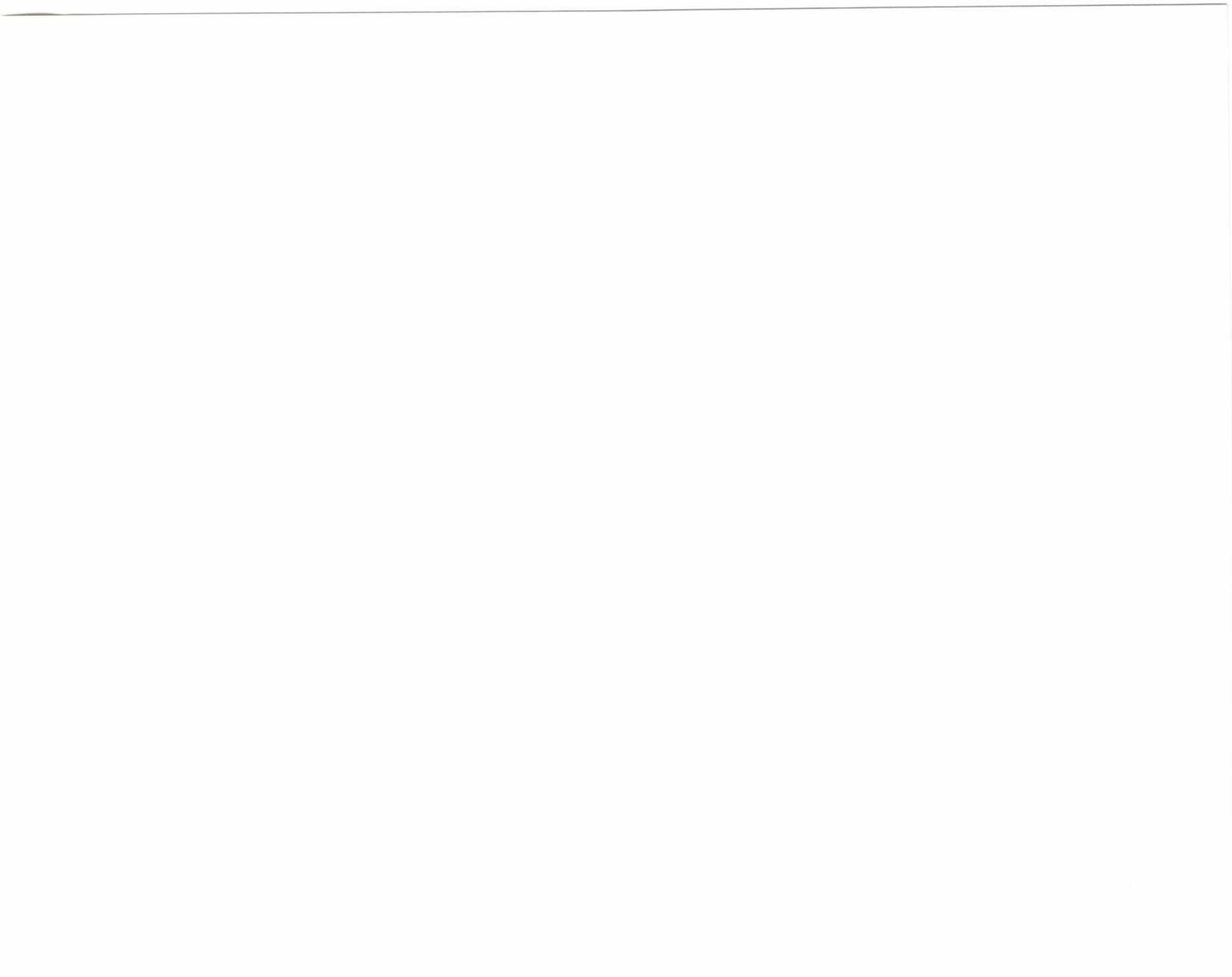
41. HIPAA applies to "covered entities." Covered entities include health care providers, health plans, and health care clearing houses. 45 C.F.R. § 160.103. Respondent is a covered entity.

42. HIPAA states that covered entities "may not use or disclose protected health information[.]" 45 C.F.R. § 164.502(a). "Protected health information" means individually

identifiable health information stored or transmitted through any form or medium. 45 C.F.R. § 160.103. “Individually identifiable health information” means health information relating to “the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual” which either “identifies the individual” or “there is a reasonable basis to believe the information can be used to identify the individual.” *Id.* “Health information” means any information “. . . created or received by a health care provider . . . [relating] to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual.” *Id.* Respondent’s disclosures to Callen and Rudavsky, when taken in its entirety, contained health information which Respondent had a reasonable basis to believe could be used to identify Patient. Consequently, these disclosures contained protected health information.

43. HIPAA permits disclosure of protected health information in certain limited circumstances – including pursuant to patient authorization. 45 C.F.R. § 164.502(a). Respondent has not provided any information to demonstrate her disclosure to Callen and Rudavsky fell within one of those limited circumstances.

44. HIPAA provides a safe harbor for disclosures containing only “[h]ealth information that does not identify an individual and with respect to which there is no reasonable basis to believe that the information can be used to identify an individual is not individually identifiable health information.” 42 C.F.R. §164.514(a). HIPAA further specifies that “health information is not individually identifiable health information only if” a list of eighteen identifiers are removed. *Id.* At (b). These identifiers include any “unique identifying number, characteristic, or code[.]” *Id.* Respondent’s disclosures to Callen and Rudavsky, when taken in their entirety, contained unique



identifying characteristics regarding Patient, and therefore fell outside HIPAA's safe harbor provision.

45. Under Indiana law, physicians must "maintain the confidentiality of all knowledge and information regarding a patient[.]" 844 IAC 5-2-2. This provision mirrors HIPAA's confidentiality standards. Because Respondent's disclosures to Callen and Rudavsky violated HIPAA, she failed to maintain confidentiality of information regarding Patient.

46. "A person who has a duty under this chapter to report that a child may be a victim of child abuse or neglect shall immediately make an oral or written report to either" the Department of Child Services or "the local law enforcement agency." Ind. Code § 31-33-5-4. Respondent reported the suspected abuse of Patient to the local law enforcement agency in Ohio through Shook and FCCS.

CONCLUSIONS OF LAW

47. By a vote of 5-1-0, the Board finds Respondent did commit the violations as charged by Petitioner in Counts I-III:

Count I: Respondent's actions constitute a violation of Ind. Code § 25-1-9-4(a)(3) in that Respondent has knowingly violated any state statute or rule, or federal statute or regulation, regulating the profession in question. Specifically, Respondent violated 45 C.F.R. § 164.502(a) by disclosing Patient's protected health information.

Count II: Respondent's actions constitute a violation of Ind. Code § 25-1-9-4(a)(3) in that Respondent has knowingly violated any state statute or rule, or federal statute or regulation, regulating the profession in question. Specifically, Respondent violated 45 C.F.R. § 164.514 by not properly de-identifying the information of Patient.

Count III: Respondent's actions constitute a violation of Ind. Code § 25-1-9-4(a)(3) in that Respondent has knowingly violated any state statute or rule, or federal statute or regulation, regulating the profession in question. Specifically, Respondent violated 844 I.A.C. 5-2-2 by failing to maintain the confidentiality of all knowledge and information regarding Patient.

48. By a vote of 6-0-0, the Board finds Respondent did not commit the violations as charged by Petitioner in Counts IV and V:

Count IV: Respondent's actions constitute a violation of Ind. Code § 25-1-9-4(a)(14). Specifically, Respondent violated Ind. Code § 31-33.5-5-1 by failing to immediately report suspected child abuse to local law enforcement in Indiana or DCS despite having reason to believe that a child is a victim of child abuse or neglect.

Count V: Respondent's actions constitute a violation of Ind. Code § 25-1-9-4(a)(4)(B) in that Respondent has continued to practice although the practitioner has become unfit to practice due to failure to keep abreast of current professional theory or practice. Specifically, Respondent failed to follow mandatory reporting laws and patient privacy laws that impact her practice as a physician in Indiana and the United States.

ORDER

Based upon the above Findings of Fact, Ultimate Findings of Fact, and Conclusions of Law, the Board issues the following Order:

1. Respondent shall have a **LETTER OF REPRIMAND**, attached hereto as Exhibit A, issued against her Indiana physician license.

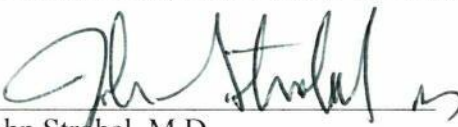
2. Respondent shall pay a **FINE** of one thousand dollars (\$1,000.00) for each violation for the total amount of three thousand dollars (\$3,000.00). This fine shall be paid by check or money order and submitted to the following address within **ninety (90) days** of this Order:

Indiana Professional Licensing Agency
Attn. Medical Licensing Board of Indiana
402 West Washington Street Room W072
Indianapolis, Indiana 46204

3. A violation of the Final Order, or any non-compliance with the statutes or regulations regarding the practice of medicine, may result in Petitioner requesting a summary suspension of Respondent's license, an Order to Show Cause as may be issued by the Board, or a new cause of action pursuant to Ind. Code § 25-1-9-4, any or all of which could lead to additional sanctions, up to and including a revocation of Respondent's license.

SO ORDERED, this 27th day of July 2023.

MEDICAL LICENSING BOARD OF INDIANA

By: 
John Strobel, M.D.
Board President

CERTIFICATE OF SERVICE

I certify that a copy of the “Findings of Fact, Conclusions of Law and Order” has been duly served upon:

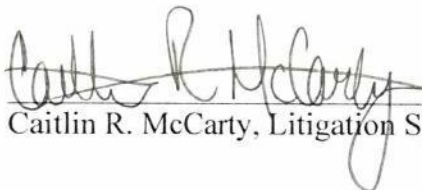
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7/27/2023
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Explanation of Service Methods

Personal Service: by delivering a true copy of the aforesaid document(s) personally.

Service by U.S. Mail: by serving a true copy of the aforesaid document(s) by First Class U.S. Mail, postage prepaid.

Service by Email: by sending a true copy of the aforesaid document(s) to the individual's electronic mail address.

LETTER OF REPRIMAND

Caitlin Bernard, M.D.
550 North University Blvd.
Indianapolis, Indiana 46202

FILED

JUN 27 2023

**Re: In the Matter of the License of Caitlin Bernard, M.D.
Before the Medical Licensing Board of Indiana**

Indiana Professional
Licensing Agency

Dr. Bernard:

This Letter of Reprimand is issued in accordance with the Findings of Fact, Conclusions of Law and Final Order issued by the Medical Licensing Board of Indiana resolving the Administrative Complaint against your Indiana physician license filed by the Office of the Indiana Attorney General on November 30, 2022

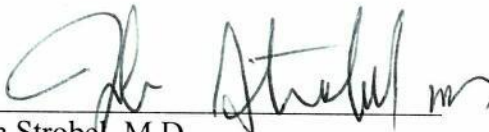
The purpose of this reprimand is to stress the important responsibility you have by reason of possession of a license to practice medicine in the State of Indiana. It is your responsibility to conduct your practice of medicine in accordance with the standards of the profession. Further, there is an expectation that you refrain from violating any rule or statute regulating the practice of medicine in Indiana. Specifically, you are expected to maintain the confidentiality of all knowledge and information regarding a patient and comply with all applicable elements of HIPAA and Indiana patient privacy protections afforded pursuant to 844 I.A.C. 5-2-2.

The Findings of Fact, Conclusions of Law, and Final Order are attached and incorporated herein as part of this reprimand.

Sincerely,

MEDICAL LICENSING BOARD OF INDIANA

By:



John Strobel, M.D.
Board President